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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,089	04/14/2004	Kenneth M. Nicolay	106.04	7020

37761 7590 03/22/2005

ERICKSON & KLEYPAS, L.L.C.
800 W. 47TH STREET, SUITE 401
KANSAS CITY, MO 64112

EXAMINER

JACKSON, ANDRE L

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 03/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<p><i>Office Action Summary</i></p>	Application No. 10/824,089	Applicant(s) NICOLAY ET AL.	
	Examiner Andre' L. Jackson	Art Unit 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-14 and 16-19 is/are rejected.
- 7) ☐ Claim(s) 8 and 15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4/14/04 & 7/29/04</u> | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5-7, 9, 13, 14 are rejected under 35 U.S.C. 102(b) as being anticipated by USPN 2,629,624 to Nelles. Nelles discloses folding tool with handle, the handle comprising; first and second legs (11), each of the legs having a first end and a second end; a first cross-member (17) extending between the first and second legs proximate the first ends thereof; a second cross-member (24) extending between the first and second legs proximate the second ends thereof; an inner grip handle (21) connected to and extending between the first and second legs between the first and second ends thereof; an outer grip handle (25) connected to the first cross-member and extending approximately perpendicular to the first cross-member; and a tool head connector (7, 8) connected to the second cross-member; the tool head connector adapted for connecting a tool head (1) thereto.

As to claims 5-7, 13 and 14, Nelles discloses that the outer grip handle is rotatably connected to the first and second legs about a pivot axis (9). A securing means in the form of locking members (13) releasably secures the outer grip handle in a selected orientation relative to the legs.

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 16 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by USPN 5,048,883 to Waluk. Waluk discloses a tool assembly securable to a shovel or scraper, the tool assembly comprising;

a telescoping leg assembly (23, 24) having first and second ends; a tool head connecting member (22) located at a second end of the telescoping leg assembly and adapted for removably connecting to a shovel or scraper (10) to the tool assembly; an inner grip handle (30) having a grip (32) extending generally perpendicular to the telescoping leg assembly.

As to claims 17, the inner grip handle is adjustable/slidable, such that the inner grip can be set in numerous positions (25) along the telescoping leg assembly.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 3, 10, 11 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelles in view of Waluk. Although Nelles discloses that the outer grip handle is rotatably connected to the first and second legs about a pivot axis, Nelles fails to disclose the first and legs are formed from telescoping members or that the inner grip handle is slidably connected to the legs as claimed. Waluk teaches a tool assembly securable to a shovel or scraper, the tool assembly including a telescoping leg assembly (23, 24) having first and second ends, a tool head

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connecting member (22) located at a second end of the telescoping leg assembly and adapted for removably connecting to a shovel or scraper (10) to the tool assembly and a slidable inner grip handle extending generally perpendicular to the telescoping leg assembly to conform to users of different heights and comfort arrangements. Therefore, it would have been obvious to one having ordinary skill in the art at the time of applicant's invention to modify the folding tool of Nelles with the tool assembly as taught by Waluk to provide an improved adjustable folding tool capable of conforming to users of different heights and comfort points.

Claims 4, 12 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelles in view of Waluk and further in view of USPN 4,229,033 to Vosbikian. Nelles in view of Waluk does not disclose that the inner grip handle is pivotable between a first position and a second position as claimed. Vosbikian shows a shovel assembly (10) comprising a main shaft (14) with a shovel implement connector (16) connected to a shovel (12) at one end and a handle grip (52) at an opposite end. An auxiliary or inner handle (28) is provided and pivots in a first position away from the shaft and a second position planar or adjacent the shaft. The auxiliary handle affords easier lifting forces and transporting purposes without the need for a user to bend. Therefore, it would have been obvious to one having ordinary skill in the art at the time of applicant's invention to modify the folding tool of Nelles in view of tool assembly of Waluk with the shovel assembly shown by Vosbikian to provide a multi-purpose adjustable folding tool including an inner grip handle affording easy lifting and transporting without the need for a user to bend.

Allowable Subject Matter

Claims 8 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. In particular, Nicolay et al, Jouban, Hauser et al and Briggs all disclose various tool implement assemblies including inner and outer grip handles. These references may be used in combination or singly to meet the limitations of applicant's base claim(s).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andre' L. Jackson whose telephone number is (703) 605-4276. The examiner can normally be reached on Mon. - Fri. (10 am - 6 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy J. Swann can be reached on (703) 306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

André L. Jackson
Patent Examiner
AU 3677

ALJ


ROBERT J. SANDY
PRIMARY EXAMINER